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COPY

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4 MELVIN LOWE,

5 Plaintiff,

6 Vs.

CIVIL ACTION NO.
2:05-CV-0495

7 MONTGOMERY COUNTY BOARD OF
8 EDUCATION; VICKIE JERNIGAN,
9 MARK LABRANCE, TOMMIE MILLER,
10 MARY BRIERS, DAVE BORDEN,
11 HENRY A. SPEARS and BEVERLY ROSS,
in their official capacities as
members of the Montgomery County
Board of Education; and DR. CARLINDA
PURCELL, in her official capacity as
Superintendent of the Montgomery County
Board of Education,

13 Defendants.

14 * * * * *

15 DEPOSITION OF JIMMY BARKER, taken pursuant to
16 stipulation and agreement before Pamela A. Wilbanks,
17 Registered Professional Reporter and Commissioner for
18 the State of Alabama at Large, in the Law Offices of
19 Hill, Hill, Carter, Franco, Cole & Black, 425 South
20 Perry Street, Montgomery, Alabama, on Monday, January
21 23, 2006, commencing at approximately 1:10 p.m.

22

23 * * * * *

Blumberg No. 5137

5

1 because the HR department has no authority
2 over the superintendent.

3 Q. Sure. But what if it's a complaint? Who is
4 going to investigate the complaint if the
5 complaint is against the HR department?

6 A. Generally we will assure those to whom we
7 report, such as the superintendent, the
8 validity -- from our perspective the validity
9 of the claims against us, whether or not it
10 has any validity -- the complaint has any
11 validity and show them and tell them what our
12 particular position is on whatever the issue
13 is that is being complained about.

14 Q. Is there any policy by the school system to
15 provide for somebody else outside the HR
16 department to investigate a complaint relative
17 to the HR department?

18 A. There's no policy, no.

19 Q. Now, the superintendent described hiring
20 processes with regard to certified personnel.
21 While you have been at the Montgomery County
22 School System, has that been -- is she correct
23 in the way she's described those hiring

1 processes?

2 A. By and large -- I don't remember what her
3 exact testimony was, but by and large the
4 process goes like this: If a person applies
5 for a particular position, HR department's
6 first responsibility is to check to see
7 whether or not that person meets the minimum
8 qualifications for that particular position.
9 Then the supervisors who are going to
10 interview that person, whether they be a
11 principal, whether they be an assistant
12 superintendent or specialist, are given a list
13 of the individuals who applied for the
14 position in your department who meet minimum
15 qualifications. Then they are encouraged to
16 interview a representative sample based upon
17 review of resumes and make a recommendation
18 back to HR of your top candidates for that
19 position. Generally we do not allow them to
20 rank order on paper saying this is my first
21 choice, this is my second choice, this is my
22 third choice. These are my top three choices
23 for this particular position.

1 However, there are generally follow-up
2 conversations wherein you might make it known
3 to someone in HR, well, I really prefer this
4 person. I understand that, but give me your
5 top three choices so that I may submit them to
6 the superintendent along with their resume,
7 and then the superintendent may very well get
8 back with you and find out, well, who is your
9 first choice or who is your second choice.
10 That does happen in an informal process, but
11 on paper, these are my top three choices.

12 Q. Would it be correct to say that the hiring
13 practices of Montgomery County dictate making
14 every effort to follow the recommendations of
15 department heads, supervisors and/or any
16 interview panel for positions posted with the
17 school system?

18 A. Unless there are mitigating circumstances,
19 yes.

20 Q. What kind of mitigating circumstances?

21 A. Such as there are screening panels on occasion
22 that are used to say, well, this category of
23 applicant here is highly recommended as

opposed to this category here is recommended
with some concern to make sure that they meet
certain specificities. They very well may
meet the overall posted qualifications. A
screening committee may very well be necessary
in order to separate them into tiers of highly
recommended, not highly recommended,
recommended with concern, things of that
nature. That's not out of the ordinary.

10 Q. What job classifications use screening panels
11 and what do not?

12 A. Most recently the reading coaches and the math
13 coaches in the school district.

14 Q. When did the reading coaches start using
15 screening panels?

16 A. Let's see. Our ARFI grant application, which
17 is Alabama Reading First Initiative, started
18 in the late summer of '03. Thereafter, in an
19 effort to control the quality level of the
20 applicants --

21 (Brief interruption.)

22 Q. I'm sorry. Go ahead.

In an effort to control the quality level of

1 not required to do so because that was a
2 distinctively different function than the
3 reading coach.

4 Q. How is a reading tutor different from a
5 reading coach?

6 A. Both are clinical in nature. The reading
7 tutors were designed primarily to pull out
8 students who were at-risk students at a given
9 school site and work with them on an
10 individual basis to try to bring them from one
11 level, maybe intensive, up to another level.
12 They were encountering some difficulties.

13 The reading coaches worked with teachers
14 in order to bring about the same desired
15 change. They worked individually
16 prescriptively with the teachers to bring
17 about the necessary changes to bring larger
18 groups of students along from an area of being
19 at risk to one that is not at risk or to make
20 academic gains with larger groups of
21 students. But that was the distinct
22 difference. The coaches worked with the
23 teachers, tested, gave feedback, that type of

1 thing, and the teacher-tutors worked with
2 students by definition.

3 Q. You said something -- You mentioned something
4 about a requirement that was not there for
5 reading tutors but was for reading coaches for
6 panels. Whose requirement are you referring
7 to that the screening panel be used?

8 A. This is Montgomery Public Schools's --

9 Q. This is no federal --

10 A. No.

11 Q. -- mandate that you do that for reading
12 coaches?

13 A. No.

14 Q. No state department mandate?

15 A. No.

16 Q. And so it's your testimony reading coaches
17 have gone -- all the reading coaches then
18 would have gone through this screening process
19 from the fall of 2003?

20 A. In one form or another. The composition of
21 the screening committee may not have been the
22 same. For example, when you were selecting
23 system-wide reading coaches, the initial ARFI

1 application had basically the assistant
2 superintendent for curriculum and instruction
3 in place and the ARFI grant had an
4 administrative officer for that particular
5 program. Teresa Nichols assumed that.

6 In the early stages of selecting the next
7 system-wide reading coach, those were the two
8 individuals who had any position of knowledge
9 as it related to the program. They
10 constituted the screening committee. Then
11 they brought on the first system-wide reading
12 coach, Teresa Jackson. They participated in
13 that process. Once she came aboard, she sat
14 in on the subsequent committee to select the
15 system-wide reading coaches that were to
16 report to her. After they got on, then we had
17 the specialists within curriculum. For
18 example, the committee that Mr. Lowe was to
19 submit to to interview with was comprised of
20 specialists from curriculum and instruction
21 department.

22 Q. Who was the committee that he --

23 A. I may leave somebody out, but there was Connie

1 Mizell. There was Sharon Sewell. There was
2 Tom Toleston. There was Ms. Days (phonetic),
3 Sherry Days. And myself and Mike Looney were
4 in and out on those. We would -- We may not
5 have sat through the entirety of all of them,
6 but we sat in just to ensure that proper
7 procedure was being followed.

8 Q. Which committee are you referring to where
9 Looney would have been on?

10 A. The committee wherein possible reading coaches
11 for the school district were being screened.

12 Q. What time frame is that?

13 A. For schools -- Let me retract that. Not for
14 the reading district, for schools -- for
15 individual schools. This was -- Let's see. I
16 would say at the end of -- during the summer
17 of '03 going into '04 or the summer of '04
18 going into '05. The summer of '04 going into
19 '05.

20 Q. Would --

21 MS. CARTER: Summer of '04 going
22 into '05?

23 A. The summer of '04 going into '05, when

1 Mr. Lowe applied for the position of reading
2 coach -- No. It was '04 -- It would have been
3 the summer of '05, the summer of '05, the one
4 wherein he applied for the position for
5 consideration with Paterson Elementary School.

6 Q. Well, Looney wasn't an employee of the school
7 system then, was he?

8 A. Mr. Looney left us at the end of that same
9 summer. Mr. Looney just left us at the end of
10 the '04-'05 school year just after Dr. Purcell
11 came aboard. If you recall, she came aboard
12 in December of '04. Mr. Looney left leaving
13 for another county during that following
14 summer.

15 Q. Well, when did Lowe go through this -- you say
16 he went through in the summer of '05 this
17 Paterson position with Dr. Owens. Do you
18 remember when that was in the summer of '05?

19 A. No, I can't remember. I'm sure that they have
20 documentation.

21 Q. But you remember Looney was on that committee?

22 MS. CARTER: Object to form.

23 A I remember that Mike Looney participated in

1 that screening process in and out just as I
2 was because I sat in with him on many
3 occasions, yeah.

4 Q. The committee's interviews, do they take
5 notes? Do they keep those notes in a file on
6 what they found in that interview process?

7 A. They took notes. They had a grading rubric
8 and everything. I'm sure that they may even
9 still have those notes. Connie Mizell headed
10 up that committee, so I would just have to
11 touch bases with her to see whether or not she
12 actually had them. I can't speak for her, but
13 they had a grading rubric. That was my
14 purpose of being there, to make sure we were
15 asking the exact same questions of all of the
16 applicants, that we were following protocol as
17 it relates to good interview procedures.

18 Q. So the questions they were asking were
19 standardized questions?

20 A. They had them scripted.

21 Q. Do y'all still have a copy of those questions?

22 A. I would check with them just to be sure. I
23 would say -- I would expect them to, yes.

1 Q. Do they make documentation of how they scored
2 everything?

3 A. I'm quite sure they probably do.

4 Q. Does the school system keep that?

5 A. Yes. They would not have been kept in my
6 department, in HR. It would have been kept by
7 the committee, which was headed by Connie
8 Mizell, so it would be a matter of my touching
9 bases with her and asking her to reproduce
10 those individual grade sheets for all of the
11 applicants.

12 Q. I'm jumping a little bit ahead, but since
13 we're there I'm going to ask you. What did
14 Mr. Lowe score? Do you know?

15 A. I don't recall specifically his score. They
16 didn't give me -- I didn't say, well, what did
17 this particular individual make and what did
18 that particular individual make. Basically
19 what I assured the principals of was this: If
20 you want to interview for a reading coach, the
21 screening committee has already placed certain
22 categories of individuals -- certain
23 individuals in certain categories based upon

1 how well they faired in that screening
2 process. Touch bases with them to ensure that
3 you know whether or not this particular
4 individual comes in a highly recommended
5 position or whether they are recommended with
6 some concerns, did not do as well as some of
7 the other applicants in that overall screening
8 process, and then interview from among those
9 individuals who have been approved and then
10 make the recommendation back to HR in terms of
11 the person whom you might want based upon your
12 interview.

13 Q. Do you remember where Mr. Lowe fell in that?
14 Was he highly recommended?

15 A. He was not.

16 Q. Recommended with concerns?

17 A. When I -- As was standard with me, if a person
18 was recommended as a reading coach, my first
19 thing was to check with the screening
20 committee and see is this person among those
21 individuals who were recommended highly by the
22 committee. They couldn't control the
23 selection of that person, but I wanted to

1 ensure that we had someone who had a basic
2 knowledge of what was expected of them once
3 they got in a reading coaching position who
4 had demonstrated in a screening process that
5 they were high in the order of selectivity by
6 that screening committee. And that's all I
7 would assure with them.

8 And if they said, well, yes, this is one
9 of our top performers, then, of course, I
10 would take that for what it was worth. If
11 they said, no, then I would get back in touch
12 with that principal and say, well, this person
13 was okay. He passed -- He or she passed the
14 initial requirements for this particular job;
15 however, they are not in the highly
16 recommended position; do you need a list. Do
17 you need a modified list of the individuals
18 who were in there. That was my standard
19 procedure.

20 Q. Did Lowe pass?

21 MS. CARTER: Did he what?

22 Q. Did he pass? You said some individuals may
23 pass, but they may not be highly recommended.

1 Did Lowe pass?

2 A. I may have used that out of context, the
3 passed and the not passed. Whether or not
4 they were highly recommended or whether they
5 were recommended with concern. When I touch
6 bases with Connie Mizell, for example -- When
7 Mr. Lowe's name was submitted to me, I got
8 with Connie Mizell. My next thing was,
9 Connie, these are the individuals who have
10 been recommended for the coaching position at
11 Paterson. You know what our concerns are with
12 regard to getting the very highest quality for
13 Paterson Elementary because they did not
14 perform well last year. There was some
15 concern. Is this an individual who was in the
16 top echelon of your screening process. No,
17 Mr. Barker, for this reason, this reason, that
18 reason, et cetera.

19 I get on the phone and I call up Dr. Owens
20 and I tell him, this is the feedback that I've
21 gotten from the screening committee; will you
22 consider some of the other applicants who
23 are -- faired better in that grading rubric

1 when the applicants were screened. Yes,
2 Mr. Barker, I'll do so; have Ms. Mizell get in
3 touch with me and give me the names of some of
4 those individuals who were in the upper
5 echelon of that grading rubric.

6 I had Ms. Mizell get in touch with
7 Dr. Owens, give him those names. He
8 rescreened those particular applicants,
9 according to what he told me.

10 Q. And did he at the end of that want Mr. Lowe to
11 be his employee?

12 A. At the end of that, he e-mailed me or sent me
13 a hard copy -- something to the effect that I
14 still want Mr. Lowe as my top choice for that
15 coaching positive.

16 Q. And then what happened after that?

17 A. At that particular point, then Mr. Lowe's name
18 was submitted along with two others, the
19 person who ultimately ended up with that
20 particular position, because a comparative
21 analysis was done of their academic strengths
22 and weaknesses. Basically what happened was
23 this: Ms. Freeney -- Eleanor Freeney, who was

1 selected for that position, was about a
2 15-year -- she was hired by the school
3 district back in the '80s -- the late '80s. I
4 don't remember the exact year. She had an
5 excellent screening score from the screening
6 committee. She had worked exclusively with
7 grades four through six at Brewbaker
8 Intermediate School for the past four or five
9 years, the exact grade levels that was being
10 filled for that particular position. She had
11 a master's degree. She was highly qualified
12 in reading, highly qualified in elementary
13 education. She met all the criteria. She was
14 among those three who were being recommended
15 by Dr. Owens. She obviously was our top
16 candidate, having all of those things that I
17 just mentioned to you.

18 Dr. Owens came back and said, well, if I
19 can't have Mr. Lowe, Ms. Freeney is the next
20 person I would like to have. That's when we
21 exercised that option.

22 Q. Did you ever tell Connie Mizell that Dr. Owens
23 wasn't getting who he wants this time --

1 teacher?

2 A. She had taught as an elementary schoolteacher
3 for -- She had worked consecutively with the
4 school district from the late '80s. I want to
5 say maybe '87, the time that she was hired, up
6 until that particular time -- She had 15 years
7 experience at the time. Fifteen plus.

8 Q. And you say there were -- Your testimony is
9 that you took two names and Mr. Lowe's name.
10 And then I didn't understand. Did you make
11 the decision that Ms. Freeney was a successful
12 candidate or how did -- When you got these two
13 names and Mr. Lowe's, where did it go from
14 there? I didn't --

15 A. Three names from Mr. Lowe -- I mean, three
16 names from Dr. Owens. Once I received those
17 back -- Well, when I initially received the
18 recommendation from Dr. Owens, I discussed
19 with Dr. Purcell because she had mentioned to
20 me when she placed Dr. Owens there at that
21 particular position that she wanted to put
22 together the strongest possible academic team
23 that she could for that school because they

1 had been at risk and their test scores were
2 down from the previous year.

3 Well, it's my job as HR director or the
4 assistant superintendent for HR to be as
5 familiar with the personnel that's out there
6 as I possibly can. Dr. Owens came from a
7 secondary background, secondary history, never
8 having taught an elementary subject. He had
9 been principal of an alternative site whose
10 primary focus was behavior modification, not
11 academics -- you didn't keep kids long enough
12 to focus on academics -- whose total
13 population average daily attendance was ten.
14 So he couldn't effect any real, meaningful,
15 outstanding academic program. The kids aren't
16 there. The focus is not there.

17 Mr. Lowe came from this same setting most
18 recently, his familiarity with Dr. Owens.
19 Dr. Owens in good faith recommended him for
20 the position, but it's my position as
21 assistant superintendent to have enough
22 oversight to know whether there's wisdom in
23 your recommendation process. You may very

1 well feel that you're recommending the very
2 best person for it. But from my knowledge
3 base, it's my responsibility to say, well, the
4 background is not there. Dr. Owens, you don't
5 have the academic background in elementary
6 education; let's get somebody who has some
7 extensive background in elementary education
8 as your second person in charge so that we can
9 try to staff this school as effectively as we
10 possibly can.

11 Q. Why did y'all pick Dr. Owens as a principal?

12 A. Dr. Owens is a contract principal who had just
13 come from an elementary setting, be it not the
14 most pronounced academic setting, but he had
15 just come from an elementary setting, and the
16 law requires that we place him -- that we
17 place him in some similar setting as he was
18 the prior year. Not to say that he could not
19 do the job but that he had not had the
20 demonstration of that simply because he hadn't
21 been placed in that type setting before. If
22 you're going to place him there, as the law
23 required that we do, place him in some type

1 setting, at least give him the benefit of your
2 knowledge in terms of trying to ensure that
3 he's going to be successful there.

4 Q. I guess I'm reading what you're saying.
5 You're not saying Dr. Owens was not qualified
6 to act as a principal?

7 A. No, I'm not. He had the certification, K
8 through twelve for principalship, supervision
9 and administration K through twelve. So he
10 was definitely qualified to do that job.

11 Q. Certainly if y'all didn't think he could do
12 the job, y'all could have terminated him?

13 A. Yeah.

14 Q. That's an option?

15 A. We could have.

16 Q. Now, let's back up a little bit. I still
17 didn't get from you -- You said at some point
18 this committee -- you get some names from
19 them, and you talk back to Dr. Owens. He
20 still says he wants Lowe, and you take Lowe's
21 name and two other names. I didn't get where
22 you went from that.

23 A. I go back to the superintendent at that

1 particular point, and I discuss the pros and
2 cons of the individuals who were on that three
3 recommendation. This is my recommendation as
4 assistant superintendent to you, Dr. Purcell,
5 in line with your philosophy of trying to
6 place the strongest academic team there that
7 you possibly can.

8 Q. So you recommended Eleanor Freeney?

9 A. I did.

10 Q. So it didn't happen like this, that Mr. Lowe
11 was brought up as recommended by the principal
12 and that was presented to the superintendent,
13 but you've notified the superintendent that
14 they had not gone through the process, and
15 then you came back after that process with
16 names of people who were generated from that
17 process, not Mr. Lowe, and the superintendent
18 picked from that group?

19 A. Let me clarify what I think you said, now.

20 Q. Yeah.

21 A. When he was recommended -- When Mr. Lowe was
22 among the three individuals recommended to me,
23 it was clear -- I don't want to give any

1 distortion of that. It was clear to me that
2 he was the preferred candidate by Dr. Owens.
3 I then go to the superintendent and say I have
4 a recommendation on my desk for Mr. Lowe,
5 among two others, and this is the person who
6 Dr. Owens wants for the position.

7 The superintendent inquires of me, is
8 there anything that would prevent us from
9 offering that position to him -- to Mr. Lowe.
10 And then I say, well, there are some
11 problems. The problem is he's not in the
12 upper echelons of the individuals who were
13 recommended by the screening committee.

14 Mr. Barker, have you talked extensively
15 with the screening committee, something along
16 that line. I'm not quoting her. Yes, I've
17 talked with Connie Mizell; I've gotten her
18 down in my office, and we have talked about
19 the pros and cons; she has pulled his
20 evaluation sheet and told me that he is not
21 the strongest candidate. There are some other
22 candidates that faired better than he in this
23 particular process.

1 Then Dr. Purcell said, well, have you made
2 Dr. Owens aware of this. Yes, I've made him
3 aware, and I've had Connie Mizell to get in
4 touch with him and give him the names of some
5 of the these stronger candidates. Then at
6 that particular point, of course, he
7 reinterviewed and he came back with this
8 recommendation. And, of course, consistent
9 with what we've done in the past, we can
10 choose from among these three. Based upon my
11 feelings with regard to who is best qualified,
12 then I'm recommending Ms. Freeney for this
13 particular position. That's the way it
14 basically goes -- it went.

15 Q. So you did go to the superintendent twice with
16 this --

17 A. I went to her initially to make her aware that
18 his name had been submitted among two others,
19 and I went back to her after Dr. Owens
20 resubmitted and said that this is the person I
21 still want for that position. So I made her
22 aware of the fact.

23 Q. Well, where did the two names come from the

1 identification.)

2 Q. I'll show you what I'll mark as Exhibit 7.

3 Are you familiar with that document?

4 A. Yes, I'm familiar with this document.

5 Q. What is that?

6 A. This seems to be a professional development
7 plan which is one of the instruments that goes
8 along with our PEPE evaluation which is the
9 adopted method of evaluating personnel
10 throughout the school district.

11 Q. Does it indicate the position that Mr. Lowe
12 has in that document?

13 A. It does.

14 Q. What does it indicate his position is?

15 A. It says reading coach.

16 Q. And the principal, Dr. Owens, would have been
17 the one preparing that document, evaluating
18 him?

19 A. It says the evaluator is Dr. James Owens, yes.

20 Q. Now, your meetings with the superintendent
21 where you give her the rankings or you give
22 her your recommendation, is that in writing?

23 A. Sometimes they would be in writing. Sometimes

1 the principals that agony of having to select
2 and interview someone and they may not meet
3 the qualifications. But we don't always know
4 ahead of time.

5 Q. It's not uncommon for a principal to say, I'd
6 really like to hire this person here or that
7 person for a particular job, is it?

8 A. It's not. It's not.

9 Q. Now, once the principal comes back and says, I
10 like this person or that person, do you still
11 take a sample of persons to the superintendent
12 or do you just take the principal's choice?

13 A. We take a sampling for most positions. If
14 they are teaching positions and teaching
15 positions are going to be multi over a given
16 period of time, we generally won't require
17 that you give me three people for this fifth
18 grade position that you have. These are
19 generally positions that are contested-type
20 positions, ones that are above the teaching
21 level.

22 Q. Can you think of any situations or any other
23 incidences where a principal's recommendation

1 for an employee was not followed through?

2 A. Since Dr. Purcell -- I'll put that in two
3 tiers. Since Dr. Purcell has been here,
4 roughly a little over a year ago, I can't
5 remember a specific position wherein I did not
6 recommend to her the person -- one of the
7 three people who were recommended by the
8 committee.

9 When Dr. Carter was superintendent, there
10 were occasions wherein -- I can't remember the
11 specifics of them, but I know that there were
12 occasions wherein these are the three people
13 recommended for the position; these are the 15
14 applicants who meet the minimum
15 qualifications, and Dr. Carter might exercise
16 the option of recommending one of those people
17 who were not among the top three. But the
18 rationale in my mind as to why that happened
19 was because Dr. Carter was familiar with the
20 rank and file even better than I was and knew
21 basically the qualifications of the various
22 individuals, so he felt comfortable in going
23 outside those three. Dr. Purcell basically

1 I try to discourage any of them from doing
2 so. But Dr. Owens was explicit that he wanted
3 Mr. Lowe as his first choice for the position.

4 Q. When did you first learn of the EEOC charge
5 that Mr. Lowe filed?

6 A. It's hard for me to say exactly to put it in a
7 time frame. It was prior to the
8 superintendent getting here, and she got here
9 in December of '04. So I guess it must have
10 been fall of '04 or late summer of '04.

11 Q. And did you talk to Dr. Owens about that at
12 all?

13 A. About the EEOC charge?

14 Q. Uh-huh (positive response).

15 A. Absolutely not.

16 Q. When did you find out that Mr. Owens -- Lowe
17 had filed a lawsuit in this case?

18 A. This lawsuit?

19 Q. Yes, sir.

20 A. I don't remember specifically. I just don't.
21 The chronology of it just doesn't register
22 with me.

23 Q. Did you ever talk to Dr. Owens about this

1 lawsuit?

2 A. Yes, I did. I talked to Dr. Owens when I
3 called him up to set up times with him to
4 appear for depositions.

5 Q. I'm not -- I'm really more talking about,
6 let's say, prior to June 22, 2005.

7 MS. CARTER: Let me say something
8 for the record because we don't
9 mind -- I don't mind you knowing
10 this. I think that I told
11 Mr. Barker that Mr. Lowe's
12 lawsuit had been filed because we
13 knew he had an EEOC charge. So
14 it would have been right after it
15 was filed. I just don't know
when that is.

MR. RATTY: That's fine.

18 Q. Did you ever talk to Dr. Owens prior to June
19 22, 2005 about Mr. Lowe's lawsuit?

as A Definitely not.

21 Q. Did you ever tell Dr. Owens that Mr. Lowe
22 shouldn't have filed a lawsuit?

as | A Absolutely not.

1 Q. Is the reading coach a ten-month position?

2 A. There's no cut-and-dry answer to that.

3 Reading coaches -- The evolution of reading
4 coaches in our school district came in three
5 tiers primarily. With the original
6 application for the ARFI grant, there were, if
7 I recall, ten reading coaching positions that
8 were ten-month reading coaching positions
9 because the coaches had to be trained.

10 Shortly thereafter the next year or within
11 the next year, MPSRI sponsored reading
12 coaches. Montgomery Public Schools Reading
13 Initiative reading coaches were authorized.
14 Those were ten-month positions. Then there
15 were reading coaches who were sponsored
16 through the individual Title I budgets of
17 Title I schools who were brought aboard as
18 nine-month reading coaches because they didn't
19 have the resources to pay them ten months. So
20 there were some that were nine months and some
21 that were ten months based upon the fund
22 source and the resources available to fund
23 those units. All of the ARFI and all of the

1 MPSRI were ten months. There was not a
2 reading coach assigned to Daisy Lawrence where
3 Mr. Lowe was assigned.

4 Q. Ever?

5 A. There was not a reading coach assigned there
6 by MPSRI or by ARFI. There may have been
7 coaches who were -- There was not anyone
8 assigned permanently to that campus. There
9 may have been someone who may have been
10 providing partial services, but there was not
11 a reading coach assigned there.

12 Mr. Lowe's position that he received there
13 as a teacher/tutor was a federally funded
14 Title I type position, and it was a nine-month
15 position. It was not a reading coach position
16 but a teacher/tutor position.

17 Let me clarify something for you, Bill.
18 When Mr. Lowe initially sought out that job,
19 he went to Dr. Owens, according to what
20 Dr. Owens said to me, and inquired about a
21 reading coach position. Dr. Owens told him I
22 do not have a reading coach position --
23 according to what he told me, I do not have a

1 reading coach position available; I do have a
2 teacher/tutor position available; are you
3 interested in that teacher/tutor position.
4 That clarification was made prior to Mr. Lowe
5 accepting that position. He knew fully well
6 that that was a teacher/tutor position,
7 according to the conversation that I had with
8 his principal. He said he told him this is
9 not a reading coach position; this is a
10 teacher/tutor position; are you still
11 interested. And the feedback he gave to me,
12 yes, I am.

13 Q. When were the dates of the ten-month -- the
14 RC ten-month reading -- well, the ten reading
15 coach positions that were ten-month positions,
16 the first level you said?

17 A. ARFI?

18 Q. Yes.

19 A. This was at the end of the summer of '03 going
20 into '04, the '03-'04 school year. This was
21 the first year of our reading program.

22 Q. The MPS reading coach authorized ten-month
23 positions, that second level you said, when

1 did they start?

2 A. Sometime during that same year when funds were
3 solicited from the county commission,
4 Montgomery Public School Reading Initiative.
5 Those funds came throughout that particular
6 year.

7 MS. CARTER: What year? I'm sorry.

8 THE WITNESS: '03-'04.

9 Q. The individual Title I budget nine-month
10 positions, when did that start?

11 A. The nine-month positions -- There were always
12 Title I funds that were allocated to various
13 schools. I couldn't give you a definitive
14 time frame as to when that initially started
15 because the schools had been getting Title I
16 funds all along. The key issue with Title I
17 is that there could be no supplanting. By
18 that I mean this: If a school wanted a Title
19 I reading coach and was not already allocated
20 a reading coach from one of these other two
21 sources, they could not have that individual
22 because Title I cannot be the first kid on the
23 block. It has to be in addition to. It has

1 to be supplemental. And therefore if a school
2 requested and they already had one of the
3 other two, I could give them that Title I --
4 let them use that Title I money for that
5 purpose. If they requested that and did not
6 have one of these other two, they could not
7 because it was a clear supplanting violation.

8 Daisy Lawrence did not have a coach from
9 the other two funds. They would not qualify
10 for a Title I reading coach because it would
11 be supplanting.

12 Q. Well, would there be a -- when did Title I
13 start using, though, for these nine-months --
14 when did that begin, using the Title I for
15 those?

16 A. As early on as when ARFI started. Some of the
17 ARFI schools would have more --

18 Q. '03?

19 A. -- than one.

20 Yeah. They would have an ARFI coach and
21 they would have a Title I coach. And they
22 might very well make that Title I coach in
23 addition to the ARFI. And the Title I may be

1 a nine-month and the ARFI may be a ten-month.
2 And they would pay the Title I supplemental
3 funds for the summer in order to get the
4 training and that type thing.

5 Q. Was Lowe ever -- Was his name ever listed on
6 any documents regarding the financial payments
7 the school was receiving for his position as a
8 reading coach? Was he ever designated as a
9 reading coach?

10 A. I couldn't say. Not to my knowledge.

11 Q. Do you know how the position that he applied
12 for in the fall of -- and received in the fall
13 of 2003 at Daisy Lawrence, do you know how
14 that was advertised?

15 A. It was advertised as a teacher/tutor position.

16 Q. We've received a number of documents from
17 y'all with job descriptions. Was that
18 advertisement in that material we received?

19 A. It was. It was listed as a Title I
20 teacher/tutor at various Title I sites. It
21 was not listed specifically to Daisy Lawrence.

22 Q. How would I know that that's the job
23 advertisement for that position? Is there

1 Q. Back before Mr. Lowe came back as a
2 teacher/tutor, did you have a conversation
3 with him and his mother where you informed him
4 about the reading coach positions being open?

5 A. I don't recall. I remember having an audience
6 with Mr. Lowe and his mother on a different
7 occasion. I remember them coming to my
8 office, but the specifics of that conversation
9 just escapes me to tell you the truth.

10 Q. When he came back to Daisy Lawrence in the
11 fall of '03, he was coming from Bullock
12 County. Did you have any conversations with
13 any officials at Bullock County about him
14 coming back to Montgomery, what he was going
15 to do?

16 A. I had a conversation with Mr. Lee Arthur
17 Ballard, which is protocol among HR circles.
18 I did not discuss with him any specific
19 assignment that he was to have with Montgomery
20 Public Schools. Merely that conversation was
21 along the lines of, Mr. Lowe has applied for a
22 position with Montgomery Public Schools. We
23 have a gentleman's agreement that we do not

1 raid each other for talent. If Mr. Lowe is
2 offered a position with Montgomery Public
3 Schools, are you going to perceive it as
4 tampering with regard to our entertaining the
5 possibility of hiring him. That basically is
6 the conversation -- That was the essence of
7 it, which is a conversation that happens
8 between me and other HR directors throughout
9 the contiguous counties all the time. We just
10 don't raid each other.

11 Q. But do you recall telling him that you were
12 hiring Mr. Lowe as a reading coach?

13 A. I don't.

14 Q. Do you recall telling anyone else with Bullock
15 County Board of Education that Mr. Lowe is
16 being hired as a reading coach?

17 A. I spoke with no one else from Bullock County
18 other than Mr. Ballard.

19 Q. Do you recall putting together a copy of
20 Mr. Lowe's personnel file for Ann Sipial,
21 director?

22 A. By and large that's not something I would do.
23 That's something I would delegate to my

1 about that past situation when it's not asked
2 for by the principal?

3 A. I don't know if it's a violation of a written
4 policy, but it's definitely not good business
5 to share that with another principal, no.

6 Q. Are you aware of the reprimand letter that was
7 written to Mr. Lowe regarding Southlawn being
8 sent unsolicited to Dr. Owens?

9 A. No, I'm not.

10 Q. Who would have access to that personnel file?

11 A. HR department primarily would have access to
12 it, the specialist within the department. Of
13 course, myself being the assistant
14 superintendent. The specialist within that
15 department. We have a director for certified
16 personnel, Carolyn Hicks. We have ed
17 specialists within that determine, and we have
18 various clerical support individuals in that
19 office.

20 Q. Do you ever recall Dr. Owens making any
21 inquiries through your office for information
22 regarding Melvin Lowe, that he wanted to know
23 something about his employment background or

1 his work there in the school system or
2 anything of that nature?

3 A. I don't.

4 Q. Now, we were provided during discovery some
5 investigation documents regarding Southlawn.
6 Did you conduct that investigation?

7 A. I did.

8 Q. Did Tina Minott conduct an investigation as
9 principal prior to you conducting your
10 investigation?

11 A. One of the requirements for any type of action
12 of that nature is that the principal sends an
13 investigative summary of what the allegations
14 are and what they have been able to discern
15 prior to making the recommendations to the
16 board.

17 Q. Did Tina Minott's investigation clear Melvin
18 Lowe?

19 A. No. Her purpose is not to clear or to
20 corroborate the charges. Her purpose is to
21 provide all the information to my office so
22 that a determination can be made as to the
23 guilt or innocence of the person.

1 Q. Do you remember if Tina Minott was supportive
2 of Melvin Lowe?

3 A. I don't recall specifically.

4 Q. Did she believe the allegations true or
5 untrue? Do you recall?

6 A. I just don't recall.

7 Q. Did Tina Minott recommend that Mr. Lowe
8 receive any discipline?

9 A. That's not her purpose to recommend whether or
10 not. The disciplinary end of it generally
11 will come from after I have reviewed all the
12 information, all of the student statements,
13 looked into it. I make a recommendation to
14 the superintendent based upon those
15 observations.

16 Q. But often is it not true -- We've had some
17 termination cases before that you and I have
18 been involved in that the principal will
19 recommend particular action take place.

20 A. Oh, yeah. There's an exuberance on behalf of
21 our principals in a lot of cases that breach
22 protocol. I mean, we have to --

23 Q. I'll have to remember it breaches protocol.

1 The last time it didn't breach protocol.

2 Anyway, did Tina Minott make any
3 recommendation disciplinary-wise in this case?

4 A. I'd have to review it. I have it in his file
5 at my office, but I don't remember the
6 specifics.

7 Q. What was the result of that investigation?

8 A. If I recall correctly, there was a
9 preponderance of circumstantial evidence.

10 There was evidence in which we watched the
11 videotape recordings, and it showed Mr. Lowe
12 confronting a particular student. It showed
13 him hovering over that particular student. It
14 didn't show specifically his hitting or
15 pushing that student up against a wall. But
16 it was in three-second segments, and there
17 were little breaks there. You would see here
18 and you would see there. There were a lot of
19 circumstantial-type evidence with regard to
20 that. I recommended to the superintendent
21 that I could not say with 100 percent
22 certainty that the things Mr. Lowe had been
23 accused of that he had done, but I felt sure

1 to a degree from observation on there that
2 something had transpired. And I recommended a
3 five-day suspension without pay because this
4 was the third time that I had spoken to
5 Mr. Lowe over the past several years with
6 regard to possibly mishandling a child.

7 Q. Let me show you what I'm going to mark as
8 Plaintiff's Exhibit 8 and ask you if this is
9 the complete investigative file regarding the
10 Southlawn matter.

11 (Plaintiff's Exhibit 8 marked for
12 identification.)

13 A. This seems to be rather comprehensive. This
14 seems to be the file that I would have on file
15 in that school file there at my office, yes.

16 Q. As you sit here today, can you think of any
17 documents that are not in this file?

18 A. It was so long ago, I couldn't say with any
19 degree of certainty whether there were any
20 other witness statements or anything of that
21 nature.

22 Q. Did Tina Minott want to rehire Mr. Lowe for
23 the next school year?

1 Q. Do you have any knowledge or information about
2 this incident that's outlined in Exhibit 8
3 other than what we've got before us? Are
4 there any facts or information that you know
5 about that is not in the memos and the
6 letters?

7 A. Not that I'm aware of.

8 MS. CARTER: I was just going to say
9 I think he said he viewed a
10 videotape, and it's not part of
11 Exhibit 8.

12 Q. Right. Other than the videotape?

13 MS. CARTER: I was just going to
14 clarify.

15 A. Not to my knowledge.

16 Q. Who has the videotape?

17 A. I don't know whether there are any -- what the
18 storage capacity -- whether those are erased
19 at the end of each year and they start over or
20 whether they keep those in storage. I don't
21 know enough about it, Bill, to answer with any
22 degree of certainty.

23 Q. Were you ever aware that Mr. Lowe's mother had

1 made an EEOC complaint or had ever filed any
2 EEOC lawsuit in the past?

3 A. As I sit here before you now, I cannot say
4 that I'm not aware of it. I was not aware of
5 it until Mr. Lowe filed his complaint and
6 referenced that as one of the reasons of
7 retaliation against him. It was totally
8 unbeknownst to me. I was not aware his mother
9 had ever filed any action against the school
10 district at that time.

11 Q. What about have you and Mr. Carter --
12 Superintendent Carter ever talked it?

13 A. No.

14 Q. Have y'all ever talked about, that you can
15 recall, Mr. Lowe or his mother?

16 A. Well, obviously we talked about Mr. Lowe from
17 the standpoint when I would make a
18 recommendation to him like disciplinary
19 actions, those types of discussions. And I'm
20 sure that I mentioned it to him with regard to
21 when he was assigned to the RISE program, his
22 first assignment with us, when he was cited
23 for paddling kids inappropriately. It was

1 routine for me to discuss any type of proposed
2 disciplinary action or conference that I was
3 going to have of that magnitude where there
4 may be some job action incurred with the
5 superintendent.

6 Q. What about with regard to the summer before
7 Mr. Lowe returned to Daisy Lawrence? Did you
8 have any conversations with Superintendent
9 Carter then about Mr. Lowe?

10 A. Not to my recall. Not to my recall.

11 Q. Tell me about the -- You said there were two
12 other complaints besides Southlawn. What are
13 the other two complaints?

14 A. Well, Mr. Lowe was assigned as a teacher at an
15 alternative education site that was referred
16 to under the acronym of RISE at the time.
17 There was an administrator assigned there by
18 the name of Mrs. Erodean Jeeter. Complaints
19 came to us relative to Mr. Lowe paddling
20 students without just authority. I talked, if
21 I recall correctly, with Mrs. Jeeter, and I
22 talked with Mr. Lowe concerning these
23 particular allegations. He assured me that it

1 was not taking place, and that was the
2 documentation with regard to that counseling.

3 You cannot paddle unless you are an
4 administrator or you're an agent of that
5 administration. Go over the particulars with
6 him, review the policy.

7 On the next year when he was assigned to
8 Fitzpatrick Elementary School, I received a
9 complaint that was from his principal,
10 Mrs. Vera Thompson, saying that she had
11 received complaints from parents that he was
12 rough handling their children in his
13 classroom. Mrs. Thompson asked that I get
14 Mr. Lowe down and talk to him concerning this
15 particular matter, which I did, once again
16 reminding him of what is proper procedure and
17 what constitutes physically handling a
18 particular child and what safeguards you must
19 follow. Those were the other two situations
20 that I recall.

21 Q. I did not see anything in the nature of a
22 written warning or reprimand or anything in
23 his personnel file regarding the situation

1 with Jeeter and the RISE program. Do you
2 recall if there was anything of that nature?

3 A. I don't think that there was any written
4 reprimand in that case. It sufficed for me to
5 have the conversation with him and tell him
6 basically what is acceptable and what is not
7 acceptable. If you are paddling children
8 without proper authority, cease and desist. I
9 am not, Mr. Barker, paddling children. I had
10 no proof other than the allegations on behalf
11 of the complaining parent.

12 Q. Was there any documentation of your meeting
13 with him or your investigation?

14 A. There may be a calendar indication if I were
15 to pull out a calendar back that far, if I
16 have a calendar back that far, but no other
17 documentation.

18 Q. What about with Fitzpatrick? Is there any
19 written reprimand there?

20 A. I don't think that there's any written
21 reprimand. I would have documented it in his
22 personnel file. There was just dialogue back
23 and forth between his principal and myself

1 ten-month position, is that considered to be a
2 promotion?

3 A. It is because there's a pay increase
4 associated with it.

5 Q. Does that mean they have to -- If they are
6 going to move from that position to a higher
7 one, does that position have to be advertised?

8 A. That position has to be advertised, right.

9 Q. Let's move into the fall of 2003. Do you
10 recall any conversations with Mr. Lowe or
11 about Mr. Lowe during that time?

12 A. Fall of 2003? This is the time that he was
13 hired for the position at Daisy Lawrence; is
14 that correct?

15 Q. Right.

16 A. No, other than the fact of clarifying the
17 position that he was applying for. When
18 Mr. Lowe came down and approached me with
19 regard to that particular position, of course
20 I told him that he was under contract with
21 Bullock County and that I would have to touch
22 bases with them because we have a gentleman's
23 agreement that we don't raid each other for

1 talent.

2 Mr. Lowe went over to talk with -- After
3 getting assurances from Bullock County that it
4 was not going to be tampering, then we got
5 back in touch with Dr. Owens, and he went over
6 to talk with Dr. Owens about that particular
7 position, according to the conversation that
8 Dr. Owens had with me. I cannot say that he
9 did this. I'm going strictly by Dr. Owens'
10 words to me. Dr. Owens' words to me were
11 along the line that Mr. Lowe inquired about a
12 reading coach position and that he told him
13 that he did not have a reading coach position
14 available, that he had a teacher/tutor
15 position available. And before he called me
16 back, he said that he had had the discussions
17 with Mr. Lowe that he was interested in the
18 teacher/tutor position, that he told him
19 explicitly that he did not have a reading
20 coach position and asked him if he was still
21 interested, and he said that he was. And I
22 told him to make sure that he had that
23 clarification. And according to Dr. Owens,

1 that's what he told him, that he was still
2 interested in that particular position.

3 And I had the same type conversation with
4 Mr. Lowe, that we had a teacher/tutor
5 position. Later on that very same year,
6 Mr. Lowe sought by way of e-mail clarification
7 as to what his duties and responsibilities
8 would be leading into the summer. I reminded
9 him again that he was on a nine-month
10 teacher/tutor position, that he had no
11 responsibilities beyond the 182-day teacher
12 calendar so that there would be no
13 misunderstanding of it.

14 Q. What would a reading coach do that a
15 teacher/tutor would not?

16 A. Reading coaches had responsibilities for some
17 training during the summer. If they were on
18 the nine-month reading coach position, if they
19 had no contract beyond nine months, then there
20 must be some understanding between that person
21 and the program that's going to work with them
22 as to how they were going to be paid, whether
23 they are going to be paid some type of

1 supplemental contract for those particular
2 days. If they were on a ten-month reading
3 coach position, there was already an
4 allocation. Their year extended beyond the
5 regular school year, beyond the 182 days, and
6 began before the 182 days so that that
7 training could be taken care of.

8 Q. I was really more interested in if I was to
9 look at a reading coach and a teacher/tutor,
10 what would they be doing that would tell me
11 this is a reading coach and this is a
12 teacher/tutor?

13 MS. CARTER: Different than what he
14 already explained today?

15 MR. PATTY: Well, I haven't quite
16 heard it other than nine-month
17 and ten-month.

18 MS. CARTER: He --

19 MR. PATTY: Let him explain it.

20 MS. CARTER: I don't care, but he
21 told us all about that earlier.

22 A. The primary difference, Bill, once again, was
23 the teacher/tutor was responsible for working

1 with students. You were to be diagnostic from
2 the standpoint of finding what students were
3 struggling with particular reading programs or
4 math programs. Teacher/tutors were not
5 exclusively reading. They could be math
6 teacher/tutors. You would pull those students
7 out and work with them on an individual basis
8 to try to get them to move from point A to
9 point B. Nothing in terms of any clinical
10 analysis of what teachers were doing. The
11 reading coaches were supposed to diagnose
12 deficiencies as they related to the teachers
13 themselves and work with them in improving
14 their skill level so that everybody is
15 teaching the same thing basically and
16 everybody is being as effective as they
17 possibly can. The focus was different. One
18 was on students and the other was on teachers.

19 Q. Did Mr. Carter ever say to you that all Melvin
20 Lowe is going to be in this system is a
21 teacher?

22 A. No, he did not.

23 Q. Did you ever tell Mr. Lowe or his mother

1 that's what Mr. Carter said to you?

2 A. No, I did not.

3 Q. Did you ever tell Mr. Lowe, you know what
4 Clinton Carter thinks about you?

5 A. No, I did not.

6 Q. Or indicate to him or his mother that Clinton
7 Carter was blocking him getting certain
8 positions in the school?

9 A. No, I did not. Mr. Carter had the ultimate
10 authority to make the recommendation as to
11 whether or not Mr. Lowe received employment in
12 the school district. It would be awfully
13 suppositious on my behalf to make a statement
14 such as that. On the other hand, when
15 Mr. Lowe would come to my office, he would
16 invariably want to go off on a tangent in
17 terms of what this person is not doing and
18 what this person is not doing; but,
19 Mr. Barker, I know that you are all right by
20 me, and I know that you're doing all that you
21 can to get me this job, but I know that
22 so-and-so doesn't want me to have it. It was
23 a common ploy on his behalf to try to go off

1 on a tangent in a direction.

2 Q. But you never said anything to him that
3 Superintendent Carter was blocking anything or
4 had anything --

5 A. No, sir. I did not fall off the turnip truck
6 this morning. I assure you.

7 Q. Did Superintendent Carter ever express any
8 hostility toward Melvin Lowe to you?

9 A. No, he did not.

10 Q. Or any give you any kind of indication that he
11 did not want to employ Melvin Lowe, that he
12 had reservations about Melvin Lowe?

13 A. No, he did not.

14 Q. Before Melvin Lowe was brought in as a reading
15 coach, do you remember any conversations with
16 Mr. Carter about it?

17 A. No.

18 MS. CARTER: Object to form.

19 A. No, I do not. I remember none.

20 Q. How about afterwards? Do you remember any
21 conversations with Superintendent Carter after
22 Melvin Lowe was hired at Daisy Lawrence?

23 A. No. I imagine if Mr. Carter was on board when

1 the EEOC complaint was filed that I made him
2 aware of it, of the fact that we had the EEOC
3 complaint from Mr. Lowe, as was routine with
4 me with the sitting superintendent at that
5 particular time, if I recall. That complaint
6 arrived before Mr. Carter abdicated the
7 position and before Dr. Purcell came aboard.

8 Q. Do you know from personal knowledge of what
9 kind of duties Melvin Lowe was performing at
10 Daisy Lawrence?

11 A. I do not. I cannot honestly say what kind of
12 duties he was performing because Mr. Lowe in
13 conversations with me would say, well -- later
14 on, well, Dr. Owens had me doing this and he
15 had me doing that, and he knew that I was
16 saving his bacon as far as the requirements of
17 this program and that program. But those were
18 after-the-fact observations by Mr. Lowe in
19 terms of what he was required to do there at
20 Daisy Lawrence. Since we had had the explicit
21 conversation what his duties and
22 responsibilities were as a teacher/tutor when
23 he was sent there, I assumed that Dr. Owens

1 discrepancy here was in regard to whether he
2 should have been on step 3, which establishes
3 your pay level and have four years experience,
4 or step 3 and have five years experience,
5 which would have meant the next year would
6 have affected whether or not he went to that
7 sixth year and whether subsequently he would
8 have gotten a pay raise.

9 Q. Now, it listed him -- the first one lists as a
10 teacher/tutor and the second one lists as a
11 teacher.

12 A. Right.

13 Q. Why was that changed?

14 A. On the first one, all of that information was
15 filled in by Mr. Lowe himself, it seems as
16 though, from the writing. We generally would
17 have them to fill out the top of the sheet,
18 and then we would fill out the bottom of the
19 sheet. Unless something seems out of the
20 ordinary, then we're not going to catch it if
21 they misname themselves or something of that
22 nature. But that pronouncement with regard to
23 being a reading tutor was Mr. Lowe himself.

1 Q. So y'all changed it to a teacher?

2 A. Huh?

3 Q. Y'all changed it to a teacher?

4 A. Yeah. He was a teacher/tutor, which is still
5 technically a teacher.

6 Q. And that's different from a reading tutor?

7 A. Right. Exactly. He was a teacher/tutor. If
8 you recall, I said earlier teacher/tutor does
9 not make you work exclusively with reading.
10 You may be given assignments within reading.
11 You may be given assignments within
12 mathematics. You're just designated to pull
13 students out and work with them on an
14 individual basis.

15 Q. Why wouldn't you call a reading tutor a
16 teacher?

17 A. A reading tutor?

18 Q. If a teacher/tutor is a teacher, why isn't a
19 reading tutor a teacher?

20 A. "Teacher" seems to generally infer to me that
21 you're on that nine-month teacher salary
22 schedule. Now, when this was filled out, this
23 was filled out -- if you'll notice, it didn't

1 require Mr. Lowe's signature or anything, so
2 this was filled out probably exclusively by my
3 office, by me seemingly, by the person who
4 signed it. It says, see attached. And it
5 just goes go and changes and places him on the
6 right step. But the difference between the
7 two is what I would call him is what we hired
8 him as, and what he would call himself is what
9 he perceived himself as being, I guess.

10 Q. So he was hired as a teacher/tutor which is
11 treated as a teacher, not a reading tutor?

12 A. Yeah. The technical name for a teacher/tutor,
13 a reading tutor or math tutor is
14 teacher/tutor, and they are on the exact same
15 salary schedule as a 182-day teacher.

16 Q. Is that how it's advertised?

17 A. Yes, sir.

18 Q. As teacher/tutor?

19 A. As teacher/tutor, yes.

20 (Plaintiff's Exhibit 12 marked for
21 identification.)

22 Q. Let me show you Exhibit 12 and ask you if you
23 can identify that document for me.

1 Q. Anybody.

2 A. Not to my knowledge.

3 Q. What was the reason that -- or if you recall
4 that there was an attempt of a non-renewal of
5 his teaching position at the end of 2004?

6 A. Our alternative education program was one that
7 was seemingly in continual transition. At the
8 end of each calendar year -- school year,
9 there was always a reassessment with regard to
10 the effectiveness of that program. It was
11 very commonplace that there would be an
12 overhaul -- a programmatic overhaul with that
13 program at the end of a given year going into
14 another year.

15 If you were a non-tenured personnel
16 assigned to that program, in order to
17 facilitate the programmatic overhaul, those
18 individuals would be routinely non-renewed to
19 allow that process to take place. So
20 Mr. Lowe, along with -- I think at that
21 particular time there was one other person who
22 was non-tenured -- were included for
23 non-renewal, sent letters. Everything was

1 done according to the way that it should have
2 been done except that it was not put in the
3 board minutes to confirm that they had been
4 non-renewed to facilitate this process.

5 Once we realized that that particular
6 error had been made, these individuals were
7 called back in because the deadline had come
8 and gone in order to notify them by the end of
9 the school year that their particular position
10 would be retained. Although it might be
11 contrary to our reorganization and
12 restructuring efforts, their position would be
13 retained because they were not notified --
14 They were notified in a timely manner, but the
15 board had not acted in a timely manner because
16 we had not presented it. And that's what
17 Mr. Lowe was told, and that's what the other
18 individual was told and that he was entitled
19 to the position he held the previous year.

20 Q. And so Mr. Lowe returned to Daisy Lawrence the
21 next year?

22 A. Yes. After he milked it for all that it was
23 worth. Mr. Lowe came in that summer, and we

1 had a discussion that he had that particular
2 position. I need to get your name back on a
3 contract saying that you are still employed
4 there at that school. Mr. Lowe said at that
5 particular point, I would like to wait and see
6 if I get another position. Mr. Lowe, I'm
7 telling you that you are entitled to a
8 position; at least get your name on the line
9 so that that particular position cannot be
10 filled by anybody else. He kept telling me,
11 well, let's wait and see; let's wait and see;
12 let's wait and see and see if I can get
13 something else. Nothing would preclude you
14 from applying for other positions, Mr. Lowe,
15 if you get your name back on the position that
16 you held on last year.

17 Right up to the very end of the summer, he
18 finally came in. I guess he recognized at
19 that particular point that his opportunities
20 were growing fewer with regard to being placed
21 elsewhere, and then he consented to being
22 reassigned to that same position.

23 Q. Do you remember any other conversations you

1 had with Mr. Lowe other than what you've
2 talked about just now?

3 A. No, I don't remember. I did tell him that I
4 was disappointed in the fact that he would not
5 facilitate that process of getting his name on
6 the line with reassurances that he could apply
7 for any other positions that came open. But
8 it was his right to do so, so I went along
9 with it.

10 Q. Do you recall talking to anyone about Mr. Lowe
11 during the summer of 2004?

12 A. No, I do not.

13 Q. Do you remember a position coming open at
14 McKee that Mr. Lowe applied for where
15 Principal Abrams was the principal that
16 summer?

17 A. No, I do not.

18 Q. Do you remember Principal Abrams recommending
19 Lowe for this position? An administrative
20 assistant position, I believe.

21 A. No, I do not.

22 Q. Would Mr. Lowe have the certification and
23 education for that kind of position?